IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EQUIPMENT FINANCE, LLC,	)	
	)	Civil Action
Plaintiff	)	No. 09-cv-01964
	)	
vs.	)	
	)	
STEVEN M. HUTCHISON; and	)	
BLUE HORIZON VEGETATIVE RECYCLING & LAND CLEARING, INC.,	)	
	)	
Defendants	)	

VERDICT

NOW, this 27th day of September, 2011, after trial without jury before the undersigned on October 26, 2010; and based upon the Findings of Fact, Conclusions of Law, and Discussion contained in the accompanying Adjudication, I find as follows:

On Count I of plaintiff's Complaint filed May 8, 2009 for Breach of Contract on Note, I find in favor of plaintiff Equipment Finance, LLC and against defendant Steven M. Hutchison in the amount of $151,654.09.

On Count II of plaintiff's Complaint for breach of Implied Contract, I find in favor of plaintiff Equipment Finance, LLC and against defendant Steven M. Hutchison in the amount of $1,352,040.00.[1]

[1] As explained in the accompanying Adjudication, plaintiff's claim in Count III against defendant Hutchison for Unjust Enrichment is an alternative theory of liability to plaintiff's claim in Count II for Implied Contract. Accordingly, because I find favorably for plaintiff on its Implied Contract claim in Count II, I do not reach Count III.

On Count IV of plaintiff's Complaint for breach of Implied Contract, I find in favor of defendant Blue Horizon Vegetative Recycling & Land Clearing, Inc. and against plaintiff Equipment Finance, LLC.

On Count V of plaintiff's Complaint for Unjust Enrichment, I find in favor of defendant Blue Horizon Vegetative Recycling & Land Clearing, Inc. and against plaintiff Equipment Finance, LLC.

BY THE COURT:

/s/ James Knoll Gardner
James Knoll Gardner
United States District Judge

EQUIPMENT FINANCE, LLC v. HUTCHISON ET AL.
09-cv-01964

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BLUE HORIZON VEGETATIVE RECYCLING & LAND CLEARING, INC.,	)	
	)	
Defendants	)	

* * *

APPEARANCES:

ALAN C. GERSHENSON, ESQUIRE
On behalf of Plaintiff

JAMES A. DOWNEY, III, ESQUIRE
On behalf of Defendants

* * *

ADJUDICATION

JAMES KNOLL GARDNER,
United States District Judge

The undersigned presided over a non-jury trial on the Complaint of plaintiff Equipment Finance, LLC against defendants Steven M. Hutchison and Blue Horizon Vegetative Recycling & Land Clearing, Inc. ("Blue Horizon"). At the close of the trial, I took the matter under advisement. Hence this Adjudication.

Plaintiff sued defendant Hutchison for breach of contract seeking amounts due on a Promissory Note. Plaintiff

also sued both defendants Hutchison and Blue Horizon on alternate theories of implied contract and unjust enrichment.

In the within Adjudication, I make findings of fact based upon the evidence adduced at trial, and conclusions of law based upon the legal principles and standards discussed in this Adjudication.

Based upon those findings of fact and conclusions of law, and the law applicable to this contract action, I entered a Verdict dated September 27, 2011, which accompanies this Adjudication.

In the Verdict, I find in favor of plaintiff and against defendant Hutchison for breach of contract on the Promissory Note in the amount of $151,654.09. I also find in favor of plaintiff and against defendant Hutchison in the additional amount of $1,352,040.00 for breach of an implied contract, for a total award against defendant Hutchison of $1,503,694.09.[2] In the Verdict, I also find in favor of defendant Blue Horizon and against plaintiff on plaintiff's claims based on implied contract and unjust enrichment.

At the close of plaintiff's case-in-chief at the non-jury trial of this matter, defendants made an oral motion on the

[2] As explained in the within Adjudication, plaintiff's claims against defendant Hutchison based upon implied contract and unjust enrichment are alternative theories of liability. Therefore, because I entered a Verdict in favor of plaintiff and against defendant Hutchison on plaintiff's implied contract claim in Count II of the Complaint, I did not reach or decide plaintiff's alternate unjust enrichment claim against defendant Hutchison in Count III.

record for judgment on partial findings pursuant to Federal Rule of Civil Procedure 52. Pursuant to Rule 52(c), I declined to render any judgment until the close of the evidence.

Thereafter, pursuant to Fed.R.Civ.P. 52(a)(1), based upon the findings of fact and conclusions of law stated separately in this Adjudication, I entered an Order and Judgment under Fed.R.Civ.P. 58, which will be filed immediately after the filing of the within Verdict and Adjudication. In that Order and Judgment, I denied defendants' motion for judgment on partial findings in part, and granted it, in part.

Specifically, I entered judgment on the Verdict in favor of plaintiff and against defendant Hutchison for both breach of contract on the Promissory Note and breach of an implied contract, in the amounts specified in the Verdict as described above. I also entered judgment on the Verdict in favor of defendants and against plaintiff on plaintiff's claims based on implied contract and unjust enrichment as described above.

JURISDICTION

Jurisdiction in this case is based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. Plaintiff Equipment Finance, LLC is a limited liability company which is a citizen of the Commonwealth of Pennsylvania. Defendant Steven M. Hutchison is an individual who is a citizen of the State of North Carolina. Defendant Blue Horizon Vegetative Recycling and Land Clearing, Inc. is a corporation which is a citizen of the State of North

Carolina. The amount in controversy is in excess of $75,000.00.

VENUE

Venue is proper pursuant to 28 U.S.C. § 1391(a) because the events giving rise to plaintiff's claims allegedly occurred in Lancaster County, Pennsylvania, which is within this judicial district. Moreover, by contract, the parties agreed to venue in this district.[3]

FACTUAL BACKGROUND

This Contract dispute arises from a lending relationship. Specifically, plaintiff Equipment Finance, LLC advanced money to defendant Steven M. Hutchison pursuant to a Promissory Note executed on May 31, 2001 by defendant Hutchison. He executed the note to obtain funds on behalf of his company, Long Leaf Wood Products, Inc. ("Long Leaf").

Plaintiff advanced additional money through seventeen checks issued by plaintiff[4] (which plaintiff contends represented loans). These checks were issued between July 1, 2002 and January 24, 2007 and made payable to either defendant Hutchison, Long Leaf, Long Leaf's successor Mid Atlantic Timber Company,

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[3] Complaint, Exhibit A (Promissory Note dated May 31, 2001).

[4] Paragraphs 8-10 of plaintiff's Complaint filed May 8, 2009 referred to eighteen checks. However, as noted in paragraph 8 of the Complaint, a copy of check #4162 dated March 1, 2003, allegedly payable to Long Leaf in the amount of $30,000.00, was not available and not attached as an exhibit to the Complaint. As discussed on page 6 of my September 24, 2010 Opinion denying defendants' Motion for Summary Judgment, all claims pertaining to that check were withdrawn at oral argument on the Motion for Summary Judgment held April 21, 2010. Accordingly, a total of seventeen checks remain at issue in this action.

Inc. ("Mid Atlantic"),[5] or defendant Blue Horizon, a company owned by defendant Hutchison's son, Brian Hutchison.

PROCEDURAL HISTORY

Plaintiff's five-count Complaint filed May 8, 2009 alleges breach of contract against defendant Hutchison for non-payment of a portion of the Promissory Note (Count I); implied contract against defendant Hutchison based upon seventeen[6] checks issued by plaintiff and payable to either defendant Hutchison, his company Long Leaf, Long Leaf's successor Mid Atlantic, or defendant Blue Horizon (Count II); unjust enrichment against defendant Hutchison based upon the same seventeen checks (Count III); implied contract against defendant Blue Horizon based upon two checks issued by plaintiff and made payable to Blue Horizon (Count IV); and unjust enrichment against defendant Blue Horizon based upon the same two checks (Count V).

The Complaint alleges that defendant Hutchison has only made partial repayment of the amount due under the Promissory Note, and that none of the amounts advanced through the seventeen

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[5] Long Leaf and Mid Atlantic are a single corporation. Originally, the corporation was known as Long Leaf Wood Products, Inc., but its name was changed to Mid Atlantic Timber Company, Inc. on December 13, 2001. See Agreed Upon Findings of Fact and Conclusions of Law (Plaintiff's Exhibit 21), ¶ 12. For the sake of brevity, I refer to the corporation as "Long Leaf/Mid Atlantic" throughout this Adjudication, except where discussing the execution of the Promissory Note on behalf of Long Leaf, and where discussing particular checks made payable to either Long Leaf or Mid Atlantic.

[6] As discussed in footnote 3 above, only seventeen checks remain at issue, although the Complaint lists eighteen checks.

checks, which plaintiff contends were intended as loans, were ever repaid by defendants Hutchison or Blue Horizon.

By Order of January 8, 2010, I directed the parties to file proposed findings of fact and conclusions of law. Subsequently, on March 18, 2010, the parties jointly filed a set of agreed-upon findings of fact and conclusions of law. On April 1, 2010, defendants filed proposed findings and conclusions which were not agreed upon. On April 2, 2010, plaintiff filed proposed findings and conclusions which were not agreed upon.

By Order and Opinion dated September 24, 2010, I denied defendants' Motion for Summary Judgment. Specifically, I concluded that defendants had not met their initial burden as movants for summary judgment on either affirmative defense raised (statute of limitations and statute of frauds). Further, I denied the motion because defendants failed to file the statement of undisputed facts required by my Rule 16 Status Conference Order dated November 18, 2009 and filed November 23, 2009.

Plaintiff called one witness at the non-jury trial held October 26, 2010. The witness called in plaintiff's case-in-chief was Edward T. Martel, the Collections Manager for plaintiff Equipment Finance, LLC.

Plaintiff moved 22 exhibits into evidence: the May 31, 2001 Promissory Note (P-1); plaintiff's records showing payments made, and payments due, on the Promissory Note (P-2); the

seventeen checks issued by plaintiff to defendant Hutchison, his company Long Leaf, Long Leaf's successor Mid Atlantic, and defendant Blue Horizon between July 1, 2002 and January 24, 2007 (P-3 through P-19); official corporate records from the Secretary of State of North Carolina for Long Leaf and Mid Atlantic (P-20); Agreed Upon Findings of Fact and Conclusions of Law filed jointly by the parties on March 18, 2010 (P-21); and a transcript of the deposition of defendant Hutchison taken October 20, 2009 plus four deposition exhibits (a memorandum prepared by defendant Hutchison and financial audits of Mid Atlantic for fiscal years ending September 30, 2004, 2005 and 2006) (P-22).

Plaintiff's Exhibit 21 was received in evidence in the absence of objection by defendant. Plaintiff's remaining 21 exhibits were received into evidence by stipulation of the parties.

Defendants offered no witnesses, exhibits or other evidence at trial.

FINDINGS OF FACT[7]

Based upon the testimony and evidence adduced at trial,[8] the pleadings, record papers, and Agreed Upon Findings of Fact and Conclusions of Law filed jointly by the parties, I make the following Findings of Fact.

The Promissory Note

1. On May 31, 2001, defendant Hutchison, as President of Long Leaf Wood Products, Inc. ["Undersigned"] executed under seal a Promissory Note promising to repay "Equipment Finance, Inc." ["Lender"] the principal sum of $127,803.66 in thirty-five successive monthly installments of $4,480.52 each, beginning July 15, 2001, followed by a thirty-sixth payment of $4,480.67, for a total Note amount of $161,298.87.

2. Plaintiff's Exhibit 1 is a true and authentic copy of the Promissory Note dated May 31, 2001.[9]

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[7] My Findings of Fact incorporate the relevant facts agreed to by the parties as reflected in the Agreed Upon Findings of Fact and Conclusions of Law filed March 18, 2010 (Document 28).

[8] The Findings of Fact reflect my credibility determinations regarding the testimony and evidence presented at trial. Credibility determinations are within the sole province of the finder of fact, in this case the court. Fed.R.Civ.P. 52; See, e.g., Icicle Seafoods, Inc. v. Worthington, 475 U.S. 709, 715, 106 S.Ct. 1527, 1530, 89 L.Ed.2d 739, 745 (1986).

[9] Plaintiff's Exhibit 1, the Promissory Note, was attached to Plaintiff's Complaint as "Exhibit A". At trial, plaintiff introduced all of the exhibits attached to its Complaint as Exhibits A-S, but re-marked them as Plaintiff's Exhibits 1 and 3-20, which is how plaintiff listed them in its Pre-Trial Memorandum filed March 15, 2010 (Document 27). Throughout this Adjudication, I refer to these exhibits by number, although the parties sometimes referred to them by letter during the trial. The exhibits were re-marked as follows:

(Footnote 8 continued):

3. In addition to the specific payment schedule outlined for the total Note amount of $161,298.87, the Promissory Note provides:

> In addition to the payments provided for above, the Undersigned promises to pay on demand any additional amounts required to be paid or advanced to or paid or advanced on behalf of Undersigned by Lender pursuant to the terms of any other document or instrument...executed and delivered by the undersigned to Lender; and this note shall evidence, and the said documents and instruments shall secure, the payment of all such sums advanced or paid by Lender.

4. Payments totaling $9,644.78, as listed in Plaintiff's Exhibit 2, were made on account of the Promissory Note dated May 31, 2001 and, accordingly, $151,654.09 is still due and owing on the Promissory Note. These payments were as follows:

   a. $4,480.52 paid by check dated March 27, 2002 and deposited March 29, 2002.

(Continuation of footnote 8):

Complaint Exhibit	Plaintiff's Exhibit
A	1
B	3
C	4
D	5
E	6
F	7
G	8
H	9
I	10
J	11
K	12
L	13
M	14
N	15
O	16
P	17
Q	18
R	19
S	20

b. $800.00 paid by check dated September 25, 2002 and deposited September 30, 2002.

c. $1000.00 paid by check dated December 31, 2002 and deposited January 2, 2003.

d. $1000.00 paid by check dated February 25, 2003 and deposited March 4, 2003.

e. $2,364.26 paid by check dated July 11, 2003 and deposited July 14, 2003.

Checks to Hutchison, Long Leaf, and Mid Atlantic

5. Plaintiff's Exhibits 3-17 are true, correct and authentic copies of fifteen checks issued by plaintiff that were delivered to, and deposited by, defendant Hutchison, either by himself or as a corporate officer of Long Leaf/Mid Atlantic.

6. Some of the fifteen checks were used in whole or in part to pay down mortgage loans to RBC Centura Bank and the Bank of Wilmington, which defendant Hutchison had guaranteed, specifically, Plaintiff's Exhibits 4, 11, 12 and 14.

7. The mortgage loans to RBC Centura Bank and Bank of Wilmington which were guaranteed by defendant Hutchison were secured by 10.79 acres of property that he owned, located at 2829 North Kerr Avenue, Wilmington, North Carolina.

8. The principals of those mortgage loans were reduced by $350,000.00 to $400,000.00 by funds provided to defendant Hutchison by plaintiff from the checks issued by plaintiff.

9. In 2007, the mortgaged property was sold to defendant Blue Horizon Vegetative Recycling & Land Clearing, Inc., a company owned by defendant Hutchison's son, Brian Hutchison.

10. Prior to the sale of the mortgaged property, the Bank of Wilmington loan was paid off.

11. From the proceeds of that sale, the loan to RBC Centura Bank was paid off and defendant Hutchison received $25,000.00.

12. Long Leaf Wood Products, Inc. filed Articles of Amendment to change its name to Mid Atlantic Timber Company, Inc. as of December 13, 2001, but continued to accept and deposit checks made payable to Long Leaf thereafter, including Plaintiff's Exhibits 3, 4, 5, 6, 8, 13, 15, and 16, the last of which was dated October 5, 2006.

13. Some of the fifteen checks, although made payable to Mid Atlantic or Long Leaf, were deposited in a personal RBC Centura money market account in the name of defendant Hutchison ("Hutchison RBC Account"), specifically, Plaintiff's Exhibits 8, 9, 11, 12, 13, and 14.

14. Plaintiff's Exhibit 3 is a check dated July 1, 2002 in the amount of $54,000.00 made payable to Long Leaf.

15. The $54,000.00 check to Long Leaf was deposited into a "Production Account", which was a working account used for production purposes, e.g., to pay subcontractors, loggers and truck drivers.

16. Plaintiff's Exhibit 4 is a check dated October 21, 2002 in the amount of $47,000.00 made payable to Long Leaf and deposited into the Production Account. Of that $47,000.00, $37,646.07 was used to pay down the Bank of Wilmington loan which Hutchison had guaranteed.

17. Plaintiff's Exhibit 5 is a check dated

April 7, 2003 in the amount of $13,000.00 made payable to Long Leaf and deposited into the Production Account.

18. Plaintiff's Exhibit 6 is a check dated April 7, 2003 in the amount of $150,000.00 made payable to Long Leaf and deposited into the Production Account.

19. Plaintiff's Exhibit 7 is a check dated August 29, 2003 in the amount of $45,000.00 made payable to defendant Hutchison and deposited into the Hutchison RBC Account, although defendant Hutchison believes he gave the money to his son's company, defendant Blue Horizon.

20. Plaintiff's Exhibit 8 is a check dated January 15, 2004 in the amount of $35,000.00 made payable to Long Leaf, but deposited into the Hutchison RBC Account.

21. Plaintiff's Exhibit 9 is a check dated August 20, 2004 in the amount of $50,000.00 made payable to Mid Atlantic, but deposited into the Hutchison RBC Account.

22. Plaintiff's Exhibit 10 is a check dated February 27, 2004 in the amount of $65,000.00 made payable to defendant Hutchison and deposited into the Hutchison RBC Account.

23. Plaintiff's Exhibit 11 is a check dated October 8, 2004 in the amount of $175,000.00 made payable to Mid Atlantic, but deposited into the Hutchison RBC Account. Of that sum, Hutchison used $51,209.24 to pay down the RBC Centura loan and $89,895.25 to pay payroll taxes for the years 2002—2004.

24. Plaintiff's Exhibit 12 is a check dated August 3, 2005 in the amount of $163,800.00 made payable to Mid Atlantic, but deposited into the Hutchison RBC Account. Of that sum, $148,800.00 was used to pay one of the bank loans guaranteed by defendant Hutchison.

25. Plaintiff's Exhibit 13 is a check dated

November 17, 2005 in the amount of $10,240.00 made payable to Long Leaf, but deposited into the Hutchison RBC Account.

26. Plaintiff's Exhibit 14 is a check dated April 28, 2006 in the amount of $200,000.00 made payable to Mid Atlantic, but deposited into the Hutchison RBC Account. Of that sum, $100,000.00 was used to pay down the RBC Centura loan.

27. Plaintiff's Exhibit 15 is a check dated June 21, 2006 in the amount of $34,000.00 made payable to Long Leaf and deposited into the Production Account.

28. Plaintiff's Exhibit 16 is a check dated October 5, 2006 in the amount of $30,000.00 made payable to Long Leaf and deposited into the Production Account.

29. Plaintiff's Exhibit 17 is a check dated January 24, 2007 in the amount of $25,000.00 made payable to Mid Atlantic and deposited into the Production Account.

30. The payments advanced through the fifteen checks were in consideration for a mortgage on the 10.79 acres of property at 2829 North Kerr Avenue in Wilmington, North Carolina.

31. Plaintiff was eventually to "buy the mortgage from Centura and the Bank of Wilmington." This was to happen in 2003 or 2004.[10]

32. Plaintiff's assumption of the deed of trust on the property was to be security for the repayment of the money advanced.

[10] Plaintiff's Exhibit 22 at 27-28.

Checks to Blue Horizon

33. Two checks were made payable to defendant Blue Horizon Vegetative Recycling & Land Clearing, Inc., a company owned by Hutchison's son, Brian Hutchison. Plaintiff's Exhibits 18 and 19 are true, correct and authentic copies of those two checks.

34. Plaintiff's Exhibit 18 is a check dated March 2, 2005 in the amount of $130,000.00 payable to defendant Blue Horizon. The check was endorsed by Blue Horizon and delivered to defendant Hutchison, who deposited it into the Hutchison RBC account.

35. Plaintiff's Exhibit 19 is a check dated March 2, 2005 in the amount of $125,000.00 payable to defendant Blue Horizon. The check was endorsed by Blue Horizon and delivered to defendant Hutchison, who deposited it into the Hutchison RBC account.

36. These two checks were supposed to be made payable to Mid Atlantic, not to defendant Blue Horizon, because the checks "had nothing to do with Blue Horizon."[11]

37. Brian Hutchison, defendant Hutchison's son and owner of defendant Blue Horizon, contacted Joe Braas, an employee of plaintiff, to correct the error.

38. Brian Hutchison told Mr. Braas that the checks were not supposed to be sent to Blue Horizon. Mr. Braas's instructions were to endorse them over and put them in Mid Atlantic's or defendant Hutchison's account, and he would fix the paperwork on plaintiff's end.

39. Of the $255,000.00 from the two checks payable to Blue Horizon, defendant Hutchison used $209,526.95 to pay down the RBC Centura Note.

[11] Plaintiff's Exhibit 22 at 74-76.

Additional Facts

40. None of the sums advanced by plaintiff through the seventeen checks (Plaintiff's Exhibits 3—19) were repaid by anyone.

41. Plaintiff has no documents signed by Hutchison on behalf of himself, Mid Atlantic or Long Leaf relating to the loans allegedly evidenced by the checks made payable to these three parties (Plaintiff's Exhibits 3-17) other than the endorsements on the checks themselves and the Promissory Note.

42. Kyle A. Rineer, Repossession Coordinator-Banking Officer for plaintiff, sent a letter to defendant Hutchison dated November 26, 2008 (Defendant's Exhibit 1) regarding obligations owed to plaintiff, and requested defendant Hutchison to contact plaintiff to discuss a payment plan.

43. With the exception of Plaintiff's Exhibits 7 and 10 (checks payable to defendant Hutchison) and Plaintiff's Exhibits 18 and 19 (checks payable to defendant Blue Horizon), none of the checks discussed above were made payable to any person or entity named as a defendant in this civil action.

44. Other than the handwritten words on the documents, Plaintiff's Exhibit 20 is a true, correct and authentic copy of the records of the Department of State of North Carolina as of April 17, 2009 regarding the corporate filings and status of Long Leaf/Mid Atlantic.

45. Hutchison was at all times the sole officer, director and shareholder of Long Leaf/Mid Atlantic.

46. Long Leaf/Mid Atlantic stopped doing business shortly after plaintiff ceased sending it funds in 2007.

47. From 1998 until March 2009, Long Leaf/Mid Atlantic did not file the annual report required by the law of North Carolina and its Secretary of State.

48. As a result of the failure to file annual reports, on July 6, 2004, the Secretary of State of North Carolina sent Mid Atlantic and Hutchison a Notice of Grounds for Administrative Dissolution of Mid Atlantic.

49. When neither Mid Atlantic nor Hutchison acted in response to the July 6, 2004 Notice, on December 13, 2004, the Secretary of State of North Carolina sent Mid Atlantic and Hutchison a "Notice of Revenue Suspension" suspending the corporate existence of Mid Atlantic.

50. When neither Mid Atlantic nor Hutchison acted in response to the suspension of Mid Atlantic, on January 27, 2009, the Secretary of State of North Carolina declared Mid Atlantic to be administratively dissolved and issued a Certificate of Dissolution.

CONCLUSIONS OF LAW

Applying my factual findings to the legal principles and standards discussed below, which are applicable to this contract case, I make the following conclusions of law.

1. Under the circumstances of this case, in order to avoid injustice, the corporate veil of Long Leaf/Mid Atlantic may be pierced to hold defendant Hutchison liable for the obligations allegedly incurred by that corporation.

Count I: Breach of Contract on Note vs. Hutchison

2. The Promissory Note represents a contract between plaintiff and Long Leaf/Mid Atlantic, which includes its essential terms.

3. Long Leaf/Mid Atlantic breached its obligation to repay plaintiff under the Promissory Note.

4. Through piercing of the corporate veil, defendant Hutchison is liable to plaintiff on Count I for damages of $151,654.09, the balance due under the Promissory Note.

5. The Promissory Note was executed under seal.

6. In Pennsylvania, the statute of limitations for an action upon an instrument in writing under seal is twenty years.

7. The twenty-year statute of limitations for instruments in writing under seal remains in effect until June 27, 2018.

8. Plaintiff's claim in Count I against defendant Hutchison for breach of contract on the Promissory Note is not precluded by the statute of limitations.

Count II: Implied Contract vs. Hutchison

9. An implied-in-fact contract existed between plaintiff and Long Leaf/Mid Atlantic as to the fifteen checks payable to defendant Hutchison, Long Leaf, or Mid Atlantic.

10. The two checks payable to defendant Blue Horizon were intended for and advanced on behalf of Long Leaf/Mid Atlantic, and are therefore encompassed by the implied-in-fact contract between plaintiff and Long Leaf/Mid Atlantic.

11. The implied-in-fact contract was breached as to all seventeen checks, as none were ever repaid.

12. Through piercing of the corporate veil, defendant Hutchison is liable to plaintiff on Count II for damages of $1,352,040.00, the amount advanced through the seventeen checks payable to defendant Hutchison, Long Leaf, Mid Atlantic, or defendant Blue Horizon.

13. The statute of limitations for actions on the seventeen checks is four years.[12]

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[12] As explained more fully in my discussion of Count II, the twenty-year statute of limitations on the Promissory Note may also apply to these checks because I conclude that an implied-in-fact contract exists, in part, because language in the Promissory Note indicates that additional amounts may be advanced. In that case, the Complaint was filed well within the twenty-year limitations period.

(Footnote 11 continued):

14. The seventeen checks were advanced under a continuing contract between plaintiff and Long Leaf/Mid Atlantic.

15. The statute of limitations for actions on the seventeen checks did not begin to run until the termination of the parties' relationship, at the earliest, on January 24, 2007 when plaintiff sent the last check.

16. Plaintiff's claim in Count II against defendant Hutchison for implied contract on the seventeen checks is not precluded by the statute of limitations.

Count III: Unjust Enrichment vs. Hutchison

17. The doctrine of unjust enrichment is inapplicable because I have concluded that defendant Hutchison is liable for the seventeen checks (through piercing of the corporate veil of Long Leaf/Mid Atlantic) based upon an implied-in-fact contract.

18. Therefore, it is unnecessary to address whether defendant Hutchison is liable for the checks on a theory of unjust enrichment.

Count IV: Implied Contract vs. Blue Horizon

19. No implied-in-fact contract existed between plaintiff and defendant Blue Horizon as to the two checks made payable to Blue Horizon.

20. Although these checks were made payable to defendant Blue Horizon, they were intended for and advanced on behalf of Long Leaf/Mid Atlantic.

(Continuation of footnote 11):

However, at trial of this matter, the parties agreed that the statute of limitations is the traditional four years for contracts in Pennsylvania pursuant to 42 Pa.C.S.A. 5525(a). See Notes of Testimony of the non-jury trial conducted before me on October 26, 2010, styled "Non-Jury Trial (Day 1) Before the Honorable James Knoll Gardner[,] United States District Judge" ("N.T. 10/26/10"), at 6, 31, 37-38.

21. Defendant Blue Horizon is not liable to plaintiff under an implied contract theory for the $255,000.00 advanced by these two checks.

Count V: Unjust Enrichment vs. Blue Horizon

22. Defendant Blue Horizon did not receive the benefit of the two checks made payable to Blue Horizon.

23. Defendant Blue Horizon is not liable to plaintiff under an unjust enrichment theory for the $255,000.00 advanced by these two checks.

CONTENTIONS OF THE PARTIES

Contentions of Plaintiff

Plaintiff contends that defendant Hutchison is liable to plaintiff for a total of $1,503,694.09, representing three categories of obligations. First, plaintiff contends that defendant Hutchison owes a balance of $151,654.09 on the Promissory Note executed on May 31, 2001 by defendant Hutchison as President of Long Leaf.

Second, plaintiff contends that defendant Hutchison owes $1,097,040.00 because of the issuance of the fifteen checks by plaintiff (which plaintiff contends represent loans) made payable to either defendant Hutchison himself, to Long Leaf, or to Long Leaf’s successor, Mid Atlantic.

Third, plaintiff contends that defendant Hutchison owes $255,000.00 because of the issuance of the two checks by plaintiff made payable to defendant Blue Horizon, a company owned by defendant Hutchison’s son Brian Hutchison, which checks were

actually deposited by defendant Hutchison to his own account.

Plaintiff further contends that, although the Promissory Note was signed by defendant Hutchison as President of Long Leaf, and thirteen of the checks (Plaintiff's Exhibits 3—6, 8—9, and 11—17) were payable to Long Leaf or Mid Atlantic, rather than to defendant Hutchison himself, the corporate veil of Long Leaf/Mid Atlantic should be pierced so that defendant Hutchison is individually liable for the amounts advanced under the Promissory Note and those checks.

Moreover, plaintiff contends that defendant Hutchison received the benefit of, and was unjustly enriched by, the two checks written to defendant Blue Horizon because those checks were actually delivered to defendant Hutchison and deposited into his own account. In the alternative, plaintiff contends that defendant Blue Horizon received the benefit of and was unjustly enriched by these two checks.

With regard to the statute of limitations for this action, plaintiff contends that pursuant to 42 Pa.C.S.A. § 5529(b), the statute of limitations for an action to collect under the Promissory Note is twenty years because it was executed under seal. Therefore, plaintiff contends that its claim related to the Promissory Note executed May 31, 2001 is not barred.

Regarding the checks, for which the statute of limitations would be four years pursuant to 42 Pa.C.S.A. § 5525(a), plaintiff acknowledges that eleven of the checks (Plaintiff's Exhibits 3—11 and 18—19) were dated and delivered

prior to May 8, 2005, more than four years before the filing of plaintiff's Complaint on May 8, 2009. However, plaintiff contends that the statute of limitations did not begin to run on any of the checks until demand for payment was made, or for a reasonable time after which demand should have been made, relying on Gurenlian v. Gurenlian, 407 Pa.Super. 102, 595 A.2d 145 (1991).

Plaintiff further contends that it was reasonable for plaintiff not to demand payment until after it stopped advancing money to defendant Hutchison in 2007. In support of this contention, plaintiff avers that its relationship with defendant Hutchison was in the nature of a "continuing contract" because plaintiff advanced money to defendant Hutchison over a period of years to keep his business afloat.

Plaintiff contends that in a continuing contract, the statute of limitations would not begin to run until the termination of the contractual relationship between the parties, relying on Thorpe v. Schoenbrunn, 202 Pa.Super. 375, 195 A.2d 870, 872 (1963). Therefore, plaintiff contends that the statute of limitations on the checks began running, at the earliest, on or around January 24, 2007 when plaintiff sent its final check, made payable to Mid Atlantic, to defendant Hutchison (Plaintiff's Exhibit 17).

Contentions of Defendants

Defendants do not dispute plaintiff's contentions regarding the delivery of the seventeen checks or the amounts of the checks. However, defendants dispute that the checks were intended as loans. Specifically, defendants contend that, other than the Promissory Note and the November 26, 2008 letter from Kyle A. Rineer to defendant Hutchison, which letter refers to the checks as loans, there are no writings, acknowledgment of indebtedness or documents to indicate that the checks represented loans carrying an obligation to repay.

Defendants further contend that even if the checks are found to be loans, thirteen of the checks (Plaintiff's Exhibits 3—6, 8—9, and 11—17) were not made payable to defendant Hutchison, but to Long Leaf or its successor company, Mid Atlantic, which are not named as defendants. Therefore, defendants contend that defendant Hutchison is not personally liable for amounts due under those thirteen checks.

Additionally, defendants raise the statute of limitations as an affirmative defense[13], contending that collection of certain amounts is therefore barred.

With regard to the balance of $151,654.09 on the Promissory Note, defendants originally contended that the statute of limitations on the Note was four years pursuant to

[13] Throughout this litigation, defendants also raised the statute of frauds as an affirmative defense to plaintiff's implied contract claims on the various checks. However, at trial of this matter, defense counsel indicated that they were abandoning their statute of frauds argument. N.T. 10/26/10 at 32.

42 Pa.C.S.A. § 5525. Therefore, defendants argued that an action to collect on the Promissory Note was barred because the Note was executed May 31, 2001, about eight years prior to commencement of this civil action on May 8, 2009.

However, at trial of this matter, defense counsel conceded that the Promissory Note was executed under seal.[14] Plaintiff contends that this makes the statute of limitations on the Promissory Note twenty years pursuant to 42 Pa.C.S.A. § 5529(b).

Regarding the seventeen checks, defendants appear to agree with plaintiffs on several points, specifically, that the statute of limitations is four years pursuant to 42 Pa.C.S.A. § 5525(a)[15]; that eleven of the checks (Plaintiff's Exhibits 3—11 and 18—19) were dated and delivered prior to May 8, 2005, more than four years before plaintiff's Complaint was filed on May 8, 2009; and that the statute of limitations did not begin to run on any of the checks until demand for payment was made, or for a reasonable time after which demand should have been made.[16]

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[14] Specifically, in support of defendants' Rule 52(c) motion, defense counsel stated "[T]he Statute of Limitations for a contract in the Commonwealth of Pennsylvania, as the Court is well aware, is four years. There are some exceptions. ...[Plaintiff's] Exhibit A is arguably...under seal, which I submit is arcane, but **it's under seal and I can't dispute that**." N.T. 10/26/10 at 31 (emphasis added). Defense counsel appears to refer here to the Promissory Note executed May 31, 2001 by defendant Hutchison as President of Long Leaf, which Note was attached as Exhibit A to plaintiff's Complaint and admitted into evidence as Plaintiff's Exhibit 1 at trial (although defense counsel mistakenly calls it "Exhibit 2").

[15] N.T. 10/26/10, ¶¶ 6,31, 37-38.

[16] Defendants, like plaintiff, relied on Gurenlian v. Gurenlian, 407 Pa.Super. 102, 595 A.2d 145 (1991), in support of this contention. See N.T. 10/26/10 at 40—41.

However, defendants' contend that the appropriate "reasonable time" after demand should have been made would be 45 days after advance of the funds under each check. In support of this contention, defendants reference the Promissory Note, which they contend is one of the only records in plaintiff's possession evidencing any lending relationship between the parties. The Promissory Note, dated May 31, 2001, provides that the first installment to repay the funds advanced under the Note is due 45 days later, on July 15, 2001.[17]

Although the exact nature of defendants' argument regarding the "reasonable time" is somewhat unclear, defendants appear to contend that the 45-day period in the Promissory Note is the appropriate "reasonable time" after which demand should have been made on any money advanced by the checks because it was plaintiff's practice to expect re-payment on funds advanced to begin in 45 days.[18] Therefore, defendants contend that the four-year statute of limitations began to run on each check 45 days after the date of the check, and thus collection on the eleven checks dated and delivered prior to May 8, 2005 is barred.

In response to plaintiff's contention that its relationship with defendant Hutchison was in the nature of a "continuing contract", and therefore the statute of limitations would not begin to run until the termination of the contractual

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[17] See Plaintiff's Exhibit 1 at 1.

[18] See N.T. 10/26/10 at 40—41.

relationship, defendants contend that plaintiff's records show at least four different account numbers associated with the lending relationship.[19] Defendants contend that the use of different account numbers belies the argument that there was an ongoing contractual relationship.

DISCUSSION

Motion for Judgment on Partial Findings

At the close of plaintiff's case-in-chief, defendants moved for judgment on partial findings pursuant to Rule 52(c). I deferred ruling on the motion until the close of evidence, and took the matter under advisement.

Rule 52(c) provides:

> If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

Fed.R.Civ.P. 52(c).

"In considering whether to grant judgment under Rule 52(c), the district court applies the same standard of proof and weighs the evidence as it would at the conclusion of trial." EBC, Inc. v. Clark Building Systems, Inc., 618 F.3d 253, 272 (3d Cir. 2010). Therefore, in evaluating a Rule 52(c) motion,

[19] See N.T. 10/26/10 at 39-40; Plaintiff's Exhibits 1 and 2; Defendant's Exhibit 1.

the court "does not view the evidence through a particular lens or draw inferences favorable to either party." Id. Moreover, the court may evaluate the credibility of witnesses where appropriate. Id.

For the reasons discussed below, I find favorably on plaintiff's claims against defendant Hutchison in Count I for Breach of Contract on Note, in Count II for Implied Contract, and do not reach plaintiff's alternative claim in Count III against defendant Hutchison for Unjust Enrichment. I find in favor of defendant Blue Horizon on plaintiff's claims in Count IV for Implied Contract and in Count V for Unjust Enrichment. Accordingly, I deny in part and grant in part defendants' motion for judgment on partial findings.

Piercing the Corporate Veil

As an initial matter, I must determine whether the corporate veil of Long Leaf/Mid Atlantic may be pierced to hold defendant Hutchison liable for amounts allegedly due under the Promissory Note, executed by defendant Hutchison as President of Long Leaf, and the thirteen checks payable to Long Leaf or Mid Atlantic, neither of which is a defendant in this action.

Plaintiff contends that the corporate veil should be pierced because defendant Hutchison, as the sole officer, director and shareholder of Long Leaf/Mid Atlantic completely dominated this corporate entity. Plaintiff further contends that defendant Hutchison deposited many of the checks payable to Long Leaf or Mid Atlantic into an RBC Centura bank account in his own

name, and used some of the funds to pay down mortgage loans that defendant Hutchison had guaranteed.

Moreover, plaintiff contends that Long Leaf/Mid Atlantic was inadequately capitalized, failed to follow corporate formalities, and failed to file annual reports which led to the suspension and eventual dissolution of its corporate status by the North Carolina Secretary of State.

In Pennsylvania, the legal fiction that a corporation is a legal entity separate and distinct from its shareholders may be disregarded, and the corporate veil "pierced", "whenever one in control of a corporation uses that control, or uses the corporate assets, to further his or her own personal interests...." Village at Camelback Property Owners Association v. Carr, 371 Pa.Super. 452, 461, 538 A.2d 528, 532-533 (1988)(quoting Ashley v. Ashley, 482 Pa. 228, 237, 393 A.2d 637, 641 (1978)). In Camelback the Superior Court of Pennsylvania further explains:

> In deciding whether to pierce the corporate veil, courts are basically concerned with determining if equity requires that the shareholders' traditional insulation from personal liability be disregarded and with ascertaining if the corporate form is a sham, constituting a facade for the operations of the dominant shareholder. Thus, we inquire, inter alia, whether corporate formalities have been observed and corporate records kept, whether officers and directors other than the dominant shareholder himself actually function, and whether the dominant shareholder has used the assets of the corporation as if they were his own.

Camelback, 371 Pa.Super at 461, 538 A.2d at 533 (internal citations omitted).

Other relevant factors to consider are whether there is an intermingling of corporate funds with the shareholder's personal assets, and whether the corporation was insufficiently capitalized. Id. at 465, 538 A.2d at 535.

Although an extraordinary remedy, piercing of the corporate veil in Pennsylvania does not require a specific showing of fraud. Id. at 462, 538 A.2d at 533. Rather, "the separate corporate entity [may] be disregarded whenever it is necessary to avoid injustice." Id. (quoting Rinck v. Rinck, 363 Pa.Super. 593, 597, 526 A.2d 1221, 1223 (1987)).

For the following reasons, I conclude that it is appropriate to pierce the corporate veil of Long Leaf/Mid Atlantic and hold defendant Hutchison liable for the obligations allegedly incurred by this entity.

First, Long Leaf/Mid Atlantic failed to observe certain corporate formalities during the time period encompassing the transactions in this litigation. Specifically, from 1998 to March 2009, Long Leaf/Mid Atlantic did not file the annual report required by the law of North Carolina and its Secretary of State. As a result, the Secretary of State of North Carolina suspended the company's corporate existence on December 13, 2004 and administratively dissolved the company on January 27, 2009.

This time period during which Long Leaf/Mid Atlantic failed to observe corporate formalities encompasses the execution of the Promissory Note on May 31, 2001 by defendant Hutchison as President of Long Leaf. It also encompasses the execution of the

fifteen checks payable to Long Leaf or Mid Atlantic dated between July 1, 2002 and January 24, 2007.

Further, defendant Hutchison was at all times the sole officer, director and shareholder of Long Leaf/Mid Atlantic. In addition, some of the checks payable to Long Leaf or Mid Atlantic were used in whole or in part to pay down mortgage loans to RBC Centura Bank and the Bank of Wilmington, which loans were personally guaranteed by defendant Hutchison.[20] The loans were secured by property located at 2829 North Kerr Avenue, Wilmington, North Carolina, which was eventually sold to defendant Blue Horizon, a company owned by defendant Hutchison's son. Moreover, some of the checks payable to Long Leaf or Mid Atlantic were deposited into a personal RBC Centura money market account in defendant Hutchison's name ("Hutchison RBC Account").[21]

Finally, the fact that Long Leaf/Mid Atlantic stopped doing business shortly after plaintiff ceased sending it funds indicates that the company may have been undercapitalized. Accordingly, I find that it is appropriate under the circumstances of this case, in order to avoid injustice, that defendant Hutchison be subject to personal liability for

[20] As more specifically described in my Findings of Fact, these checks are Plaintiff's Exhibits 4, 11, 12 and 14.

[21] As more specifically described in my Findings of Fact, these checks are Plaintiff's Exhibits 8, 9, 11, 12, 13 and 14.

obligations incurred by Long Leaf/Mid Atlantic. I now address the merits of plaintiff's claims.

Claim Against Hutchison for Breach of Contract on Note

Count I of the Complaint alleges that defendant Hutchison breached the terms of the Promissory Note because he has only made partial repayment of the amount due, leaving an unpaid balance of $151,654.09.

To state a claim for breach of contract in Pennsylvania, plaintiff must show (1) the existence of a contract, including its essential terms; (2) a breach of the duty imposed by the contract; and (3) resultant damages. Ware v. Rodale Press, Inc., 322 F.3d 218, 225-226 (3d Cir. 2003)(quoting CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1058 (Pa.Super. 1999)). It is plaintiff's burden to prove the existence of a contract by a preponderance of the evidence. Viso v. Werner, 471 Pa. 42, 46, 369 A.2d 1185, 1187 (1977).

For the following reasons, I conclude that plaintiff has met its burden with respect to its breach of contract claim against defendant Hutchison for the balance of $151,654.09 due under the Promissory Note executed by defendant Hutchison as President of Long Leaf.

Initially, I conclude that the Promissory Note represents a contract between plaintiff and Long Leaf/Mid Atlantic, which includes its essential terms. The Promissory Note, executed on May 31, 2001, shows that plaintiff agreed to lend Long Leaf/Mid Atlantic, and Long Leaf/Mid Atlantic agreed to

borrow, the principal sum of $127,803.66, together with interest in the amount of $33,495.21, for a total balance of $161,298.87. The Promissory Note indicates a promise to repay plaintiff the total balance in thirty-five equal successive monthly installments of $4,480.52 each, followed by one final installment of $4,480.67.[22]

Next, Long Leaf/Mid Atlantic breached its obligation to repay plaintiff under the Promissory Note. As more specifically outlined in my Findings of Fact, only $9,644.78 was paid toward the amount due under the Promissory Note[23]. Therefore, plaintiff has established that it is entitled to damages in the amount of $151,654.09, the balance due under the Promissory Note.

Therefore, I conclude that plaintiff has established all of the elements of its cause of action in Count I for breach of contract. See Gorski, supra. As noted above, I have concluded that it is appropriate to pierce the corporate veil of Long Leaf/Mid Atlantic to hold defendant Hutchison liable.

As discussed above, the parties originally disagreed as to whether the statute of limitations for an action to collect under the Promissory Note was four years pursuant to 42 Pa.C.S.A. § 5525(a), or twenty years pursuant to 42 Pa.C.S.A. § 5529(b) because the note was executed under seal. However, at trial of this matter, defense counsel conceded that the Promissory Note

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[22] See Plaintiff's Exhibit 1 at 1.

[23] See also Plaintiff's Exhibit 2.

was executed under seal.[24]

In Pennsylvania, "an action upon an instrument in writing under seal must be commenced within 20 years." Gordon v. Sanatoga Inn, 429 Pa.Super. 537, 538, 632 A.2d 1352, 1352 (1993)(quoting 42 Pa.C.S.A. § 5529(b)(1)). See also Christopher v. First Mutual Corp., 2006 U.S.Dist.LEXIS 2255, at *15-17 (E.D.Pa. Jan. 20, 2006)(O'Neill, J.), a more recent decision applying the twenty-year statute of limitations under 42 Pa.C.S.A. § 5529(b)(1).

Section 5529(b)(2) provides that "[t]his subsection shall expire June 27, 2018." Therefore, it appears that until that date, the twenty-year statute of limitations for actions upon instruments in writing under seal still applies.

Plaintiff's Complaint was filed on May 8, 2009, well within twenty years of the execution of the Promissory Note on May 31, 2001. Therefore, plaintiff's claim in Count I for breach of contract on the Promissory Note against defendant Hutchison is not precluded by the statute of limitations. Accordingly, I conclude that on Count I, defendant Hutchison is liable to plaintiff in the amount of $151,654.09, the balance due under the Promissory Note.

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[24] See N.T. 10/26/10 at 31; Plaintiff's Exhibit 21, ¶ 4.

Claim Against Hutchison for Implied Contract

Count II of the Complaint alleges that defendant Hutchison is liable to plaintiff under an implied contract for a total of $1,382,040.00. This represents funds advanced by sixteen checks payable to either defendant Hutchison, Long Leaf, or Mid Atlantic and two checks payable to defendant Blue Horizon.

As discussed in footnote 1 above, a copy of check #4162 dated March 1, 2003, allegedly payable to Long Leaf in the amount of $30,000.00, was not available and not attached as an exhibit to the Complaint. As a result, all claims pertaining to that check were withdrawn at oral argument on the Motion for Summary Judgment held April 21, 2010. Therefore, a total of $1,352,040.00 advanced under seventeen checks remains at issue for Count II.

Specifically, Count II characterizes the checks as loans and alleges that the payments were advanced to defendant Hutchison or for his benefit, with the understanding that he would repay those loans on demand. Plaintiff further alleges that it demanded that defendant Hutchison repay the loans, but he has failed and refused to do so.

In Pennsylvania, a contract implied in fact may arise where the circumstances, including "the ordinary course of dealing and the common understanding of men, show a mutual intention to contract." Liss & Marion, P.C. v. Recordex Acquisition Corp., 603 Pa. 198, 210, 983 A.2d 652, 659

(2009)(quoting Ingrassia Construction Co. v. Walsh, 337 Pa.Super. 58, 67, 486 A.2d 478, 483 (1984)).

A contract implied in fact can be found by looking to the surrounding facts of the parties' dealings. Ingrassia, 337 Pa.Super. at 67, 486 A.2d at 483. "Offer and acceptance need not be identifiable and the moment of formation need not be pinpointed." Id. (citing Restatement (Second) of Contracts § 22(2) (1981)).

It is the parties' "outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions, that matter." Id. at 66, 486 A.2d at 483. Thus, even if one party does not truly believe a contract exists, a contract can be formed if that party's manifested intent reasonably suggests the contrary. Id. at 66, 486 A.2d at 483. Contracts implied in fact have the same legal effect as any other contract. Id. at 67 n.7, 486 A.2d at 483 n.7.

Defendants contend that, other than the Promissory Note and the November 26, 2008 letter from Kyle A. Rineer to defendant Hutchison, which letter refers to the checks as loans, there are no writings, acknowledgment of indebtedness or documents to indicate that the checks represented loans carrying an obligation to repay.

For the following reasons, I conclude that under the circumstances of this case, plaintiff has established that an implied-in-fact contract existed and was breached concerning the

fifteen checks payable to defendant Hutchison, Long Leaf or Mid Atlantic. As discussed earlier, it is appropriate to pierce the corporate veil of Long Leaf/Mid Atlantic to hold defendant Hutchison liable for obligations incurred by that entity.

Regarding the two checks payable to defendant Blue Horizon, I conclude that these checks are also encompassed by the implied-in-fact contract between plaintiff and Long Leaf/Mid Atlantic, and therefore defendant Hutchison (through piercing of the corporate veil) is also liable for these two checks. I address each category of checks separately.

A. *Checks to Hutchison, Long Leaf and Mid Atlantic*

Regarding these fifteen checks, the deposition testimony of defendant Hutchison introduced at trial indicates that the payments provided by the checks were in consideration for a mortgage on the 10.79 acres of property at 2829 North Kerr Avenue in Wilmington, North Carolina. The apparent intention was that plaintiff would "buy the mortgage from Centura and the Bank of Wilmington" and "replace the local lender".[25] The testimony further implies that plaintiff was eventually to receive the mortgage as security for the repayment of the money advanced.[26]

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[25] Plaintiff's Exhibit 22 at 27—28.

[26] Specifically, during the deposition, defendant Hutchison was asked whether plaintiff "made all these advances to you without getting documentation or without getting a mortgage so that some day eventually they could get a mortgage to secure all the money they had already lent you?" Defendant Hutchison responded that "this was going to be done in 2003 or 2004" and also said "we were still getting money" for several years afterward.

(Footnote 25 continued):

Further, the actions of the parties support the existence of an implied-in-fact contract. Plaintiff did advance the money by fifteen checks dated and delivered between July 1, 2002 and January 24, 2007, although none of the amounts were ever repaid during this time. Defendant Hutchison accepted and deposited the checks throughout this time period.

I conclude that from these actions, it is reasonable to infer that the parties intended the advances under these checks as loans which were eventually expected to be repaid. In the absence of such mutual intent, it belies logic that plaintiff would have continued sending checks.

Moreover, even apart from an examination of the parties' actions, the language of the Promissory Note executed by defendant Hutchison as President of Long Leaf contemplates that further amounts beyond the principal Note amount of $127,803.66 could be advanced by plaintiff pursuant to that document.

Specifically, the Promissory Note provides:

> In addition to the payments provided for above, the Undersigned promises to pay on demand any additional amounts required to be paid or advanced to or paid or advanced on behalf of Undersigned by Lender pursuant to the terms of any other document or instrument...executed and delivered by the undersigned to Lender; and this note shall evidence, and the said documents and instruments

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(Continuation of footnote 25):

Plaintiff's Exhibit 22 at 27–28. Defendant Hutchison later indicated that plaintiff's assumption of the deed of trust on the property would be security for paying back the money. See id. at 34.

> shall secure, the payment of all such sums advanced or paid by Lender.[27]

From this language, it is reasonable to infer a promise not only to pay the Note amount, but also the additional amounts advanced through the fifteen checks to Long Leaf, its successor Mid Atlantic, and defendant Hutchison.

Accordingly, I conclude that on Count II, defendant Hutchison is liable to plaintiff in the amount of $1,097,040.00 advanced to him through the fifteen checks payable to defendant Hutchison himself, Long Leaf, or Mid Atlantic.

B. *Checks to Blue Horizon*

Count II also alleges that defendant Hutchison is liable under an implied contract theory for $255,000.00 for the two checks payable to defendant Blue Horizon Vegetative Recycling & Land Clearing, Inc. (Plaintiff's Exhibits 18 and 19). For the following reasons, I conclude that plaintiff has established that the implied-in-fact contract between plaintiff and defendant Hutchison's company for the fifteen checks payable to Hutchison, Long Leaf, or Mid Atlantic also encompasses these two checks payable to Blue Horizon.

As discussed above, the language of the Promissory Note indicates that "the Undersigned promises to pay on demand any additional amounts...paid or advanced **on behalf of Undersigned** by

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[27] Plaintiff's Exhibit 1 at 1.

Lender...."[28] Although defendant Blue Horizon was not a signatory to the Promissory Note, I infer from this language that Long Leaf/Mid Atlantic as the borrower under the note (and thus defendant Hutchison through piercing of the corporate veil) are each potentially liable for additional amounts paid not only directly to Long Leaf/Mid Atlantic, but on behalf of that entity.

Further, the circumstances surrounding the issuance and deposit of the two checks payable to defendant Blue Horizon, as well as the parties' actions concerning these checks, show the apparent intent of the parties that these checks were part of the implied-in-fact contract between plaintiff and Long Leaf/Mid Atlantic. See Ingrassia, 337 Pa.Super. at 66-67, 486 A.2d at 483.

Specifically, as outlined in my Findings of Fact, the two checks dated March 2, 2005, payable to Blue Horizon in the amounts of $130,000.00[29] and $125,000.00[30] were endorsed by Blue Horizon and delivered to defendant Hutchison. In defendant Hutchison's deposition testimony, he indicated that these checks were "suppose [sic] to be made payable to Mid Atlantic Timber"[31] (Long Leaf's successor). Defendant Hutchison further stated that

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[28] Plaintiff's Exhibit 1 at 1 (emphasis added).

[29] Plaintiff's Exhibit 18.

[30] Plaintiff's Exhibit 19.

[31] Plaintiff's Exhibit 22 at 76.

he did not know why the checks were written to defendant Blue Horizon and that they "had nothing to do with Blue Horizon."[32]

Defendant Hutchison then explained that his son, Brian Hutchison, who owned Blue Horizon, contacted Joe Braas, an employee of plaintiff, to correct the error. Specifically, defendant Hutchison testified:

> Brian called Joe and said Joe, you sent these checks to Blue Horizon, they are not suppose[sic] to be. Joe's instructions were to endorse them over and put them in Mid Atlantic or your dad's account to pay the bank note, I will fix the paperwork on EFI's end.

Plaintiff's Exhibit 22 at 76.

After Defendant Hutchison received the checks, he deposited them into the Hutchison RBC Account, a personal RBC Centura money market account in defendant Hutchison's name. Of the $255,000.00 from these checks, defendant Hutchison used $209,526.95 to pay down the RBC Centura Bank loan that he had personally guaranteed.

Based on the above facts, I find that although these checks were made payable to defendant Blue Horizon, the parties' actions show that they were intended for and advanced on behalf of Long Leaf/MidAtlantic. Therefore, I conclude that these checks are encompassed by the implied-in-fact contract that existed between plaintiff and Long Leaf/Mid Atlantic, and that

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[32] Plaintiff's Exhibit 22 at 74–76.

defendant Hutchison (through piercing of the corporate veil) is liable for these checks.

Accordingly, I conclude that on Count II, defendant Hutchison is also liable to plaintiff under an implied contract theory for $255,000.00 advanced by the two checks payable to defendant Blue Horizon. Together with the $1,097,040.00 advanced by the fifteen checks payable to defendant Hutchison, Long Leaf or Mid Atlantic, defendant Hutchison's total liability under Count II is $1,352,040.00.

C. *Statute of Limitations*

Defendant contends that even if defendant Hutchison were liable for the seventeen checks, plaintiff's claims as to eleven of them (Plaintiff's Exhibits 3–11 and 18–19) are barred by the statute of limitations because they were dated and delivered prior to May 8, 2005, more than four years before plaintiff's Complaint was filed on May 8, 2009.

As I determined above, the statute of limitations on plaintiff's claim in Count I for breach of contract on the Promissory Note, which the parties agree was executed under seal, is twenty years pursuant to 42 Pa.C.S.A. § 5529(b). Presumably, this twenty-year limitations period would also apply to the additional amounts advanced by check under the above-quoted language from the Promissory Note (although plaintiff has never so contended). Therefore, collection on the checks would not be

barred because plaintiff's Complaint was filed well within twenty years of the date of each check.

Alternatively, if, as the parties agree, the statute of limitations on the checks is four years pursuant to 42 Pa.C.S.A. § 5525(a), it is clear that eleven of the checks (Plaintiff's Exhibits 3—11 and 18—19) were indeed dated more than four years before the filing of the Complaint.

Plaintiff and defendants agree that the four-year statute of limitations would not run until demand is made, or for a reasonable time after which demand should have been made, each relying on Gurenlian v. Gurenlian, 407 Pa.Super. 102, 595 A.2d 145 (1991). Gurenlian states that where payment is to be made after demand, the statute of limitations does not begin running until demand is made. Gurenlian, 407 Pa.Super. at 112-113, 595 A.2d at 150.

"In such cases where a demand is necessary to perfect the cause of action and the time of the demand is within the plaintiff's control, the demand must be made within a reasonable time." Id. Here, as noted above, I have concluded that the checks fall into language of the Promissory Note which anticipates that additional amounts could be advanced, which amounts are payable on demand.

The parties disagree on what constitutes a "reasonable time" for plaintiff to have demanded payment. Defendants contend that a reasonable time would be 45 days after the date of each

check because the Promissory Note provides that the first installment for repayment of the Note amount is due on July 15, 2001, 45 days from the execution of the Note on May 31, 2001. Therefore, running the statute of limitations from 45 days after the date of each check, collection on the eleven checks dated and delivered prior to May 8, 2005 would be barred.

Plaintiff contends that it was reasonable for plaintiff not to demand payment until after it stopped advancing money to defendant Hutchison at the end of their lending relationship because the relationship was in the nature of a continuing contract. Therefore, plaintiff contends that the statute of limitations on all of the checks began running, at the earliest, on or around January 24, 2007 when plaintiff sent its final check, payable to Mid Atlantic, to defendant Hutchison. I note, however, that plaintiff actually made a demand for payment through a letter dated November 26, 2008 from Kyle Rineer, Repossession Coordinator – Banking Officer for plaintiff.[33]

A continuing contract is a contract, whether express or implied, which does not fix any certain time for payment or for the termination of services. Thorpe v. Schoenbrun, 202 Pa.Super. 375, 378, 195 A.2d 870, 872 (1963). See also Tenny v. Dauphin Deposit Bank and Trust Co., 302 Pa.Super 342, 347, 448 A.2d 1073, 1075 (1982), which notes that a contract may be deemed continuous because of its "silence as to duration".

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[33] See Defendant's Exhibit 1.

Whether the contract is continuous in nature is also discerned from the intent of the parties. Thorpe, 202 Pa.Super. at 381, 195 A.2d at 873.

The statute of limitations does not run on a continuing contract until the termination of the contractual relationship between the parties. Id. at 387, 195 A.2d at 872. The continuing contract doctrine is meant to carve out an exception to the general rule that the statute of limitations begins to run on the date of breach. Jodek Charitable Trust, R.A. v. Vertical Net Inc., 412 F.Supp.2d 469, 476 (E.D.Pa. 2006)(Brody, J.) (interpreting Thorpe). The Jodek court noted that the "entire focus" of Thorpe was the date on which the parties ended their relationship. Jodek, 412 F.Supp.2d at 477.

Here, I conclude that the seventeen checks payable to defendant Hutchison, Long Leaf, Mid Atlantic and defendant Blue Horizon were advanced under a continuing contract. The Promissory Note, although it sets a specific payment schedule for the Note amount of $161,298.87, does not fix a certain time for payment of "any additional amounts[34]...advanced on behalf of Undersigned by Lender". Rather, it indicates only that "the Undersigned promises to pay [these amounts] on demand".[35] Nor does the Promissory Note fix a definite time for termination of

[34] As discussed above, the checks fall under "additional amounts" that could be advanced pursuant to the Promissory Note.

[35] Plaintiff's Exhibit 1 at 1.

the lending relationship, for example, a date beyond which no "additional amounts" will be advanced.

Additionally, it is reasonable to infer from the parties' actions that they intended a continuous lending relationship. As noted, plaintiff advanced money through the seventeen checks over a period of years between 2002 and 2007, with the expectation that it would eventually receive a mortgage on defendant Hutchison's property as security for repayment. Defendant Hutchison accepted and deposited the checks throughout this time period, and plaintiff continued to send further checks even though none of the amounts were ever repaid.

Defendants contend that plaintiff's use of more than one account number in its dealings with defendants belies the existence of an ongoing contractual relationship.[36] However, when weighing this fact against the many other indicia of a continuous relationship which I have discussed, I do not find the use of more than one account number sufficient to change my conclusion that parties intended a continuous lending relationship.

Therefore, I find that the parties' relationship was in the nature of a continuing contract, and the statute of limitations thus did not begin to run until the termination of that relationship. See Thorpe, 202 Pa.Super. at 387, 195 A.2d at 872. Although the exact end point of the relationship is not

[36] See, e.g., Plaintiff's Exhibit 2, captioned "EFI Payment History for Steve Hutchison", which lists two different account numbers in a spreadsheet reflecting the payments totaling $9,644.78 made under the Promissory Note. See also N.T. 10/26/10 at 39-40; Defendant's Exhibit 1.

clear, I agree with plaintiff that the earliest date this could have been is January 24, 2007 when plaintiff sent the last check. Using this date, plaintiff's Complaint filed May 8, 2009 was well within the four-year statute of limitations.[37]

Claim Against Hutchison for Unjust Enrichment

As an alternative to plaintiff's claim of implied contract against defendant Hutchison in Count II, Count III of the Complaint alleges that under a theory of unjust enrichment, defendant Hutchison is liable to plaintiff for the $1,382,040.00 advanced by the eighteen checks payable to either defendant Hutchison, Long Leaf, Mid Atlantic or defendant Blue Horizon.

As discussed in footnote 1 above, a copy of check #4162 dated March 1, 2003, allegedly payable to Long Leaf in the amount of $30,000.00, was not available and not attached as an exhibit to the Complaint. As a result, all claims pertaining to that check were withdrawn at oral argument on the Motion for Summary Judgment held April 21, 2010. Therefore, a total of $1,352,040.00 advanced under seventeen checks remains at issue for Count III.

A claim of unjust enrichment sounds in quasi-contract or contract implied in law, which are distinguishable from express contracts or contracts implied in fact. Sevast v. Kakouras, 591 Pa. 44, 53 n.7, 915 A.2d 1147, 1153 n.7 (2007)

[37] Alternatively, if I were to consider the relationship to end, and the statute of limitations to begin running, when plaintiff made its demand for payment on November 26, 2008 through the letter from Kyle Rineer addressed to defendant Hutchison (Defendant's Exhibit 1), plaintiff's Complaint was still filed well within the four-year statute of limitations.

(citing Schott v. Westinghouse Electric Corp. 463 Pa. 279, 290, 259 A.2d 443, 448 (1969)).

A court may utilize this doctrine "to enforce legal duties by actions of contract, where no proper contract exists, express or implied." Thomas v. R.J. Reynolds Tobacco Co., 350 Pa. 262, 266, 38 A.2d 61, 63 (1944). The doctrine of unjust enrichment is therefore inapplicable when the relationship between parties is founded upon a proper contract. See Schott, 463 Pa. at 290, 259 A.2d at 448.

As I concluded above, plaintiff has established that an implied-in-fact contract existed and was breached as to the seventeen checks payable to defendant Hutchison, Long Leaf, Mid Atlantic and defendant Blue Horizon and that defendant Hutchison is liable for $1,352,040.00 owed under those checks. Therefore, I need not address plaintiff's alternative unjust enrichment claim in Count III against defendant Hutchison.

Claim against Blue Horizon for Implied Contract

As a partial alternative to plaintiff's claim of implied contract against defendant Hutchison in Count II, Count IV of the Complaint alleges that defendant Blue Horizon is liable under an implied contract theory for $255,000.00 for the two checks dated March 2, 2005 payable to Blue Horizon (Plaintiff's Exhibits 18 and 19). Specifically, Count IV alleges that if these checks were not advanced for defendant Hutchison's benefit with the intent that he would repay them, they were advanced to and for the benefit of Blue Horizon with the intent that Blue

Horizon would repay them.

As explained more thoroughly above in my analysis of Count II, an implied-in-fact contract exists where the surrounding facts of the parties' dealings and their outward manifestations of assent indicate an intention to contract. See Liss & Marion, 603 Pa. at 210, 983 A.2d at 659; Ingrassia, 337 Pa.Super. at 66-67, 486 A.2d at 483. For the following reasons, I conclude that plaintiff has not established that an implied-in-fact contract existed between plaintiff and defendant Blue Horizon.

Specifically, plaintiff has presented no evidence from which I can conclude that plaintiff and defendant Blue Horizon intended that plaintiff would advance checks to Blue Horizon in exchange for Blue Horizon's promise to repay them. Plaintiff did not present any testimony at trial, nor did plaintiff introduce testimony in deposition form, from Brian Hutchison, owner of Blue Horizon, or from any other representative of Blue Horizon.

Although plaintiff introduced defendant Steven Hutchison's deposition[38], in which defendant Hutchison mentions defendant Blue Horizon in several contexts, the primary focus of that deposition is the history of the lending relationship between plaintiff and Long Leaf/Mid Atlantic. The fact that defendant Hutchison's son Brian owns Blue Horizon, as well as the fact that defendant Hutchison sold his property in Wilmington,

[38] Plaintiff's Exhibit 22.

North Carolina to Blue Horizon, does not establish that Blue Horizon assumed any obligation to repay the two checks at issue.

Moreover, as explained more fully in my discussion of Count II, although these two checks were made payable to defendant Blue Horizon, I concluded that they were encompassed by the implied-in-fact contract between plaintiff and defendant Hutchison's company, Long Leaf/Mid Atlantic. Specifically, defendant Hutchison's deposition testimony indicates that the checks were supposed to be payable to Mid Atlantic Timber and had nothing to do with defendant Blue Horizon.

Further, plaintiff's employee Joe Braas instructed Brian Hutchison to "endorse the checks over" and that he would "fix the paperwork on EFI's end."[39] The checks were endorsed over to, and deposited by, defendant Hutchison into the Hutchison RBC Account.

From the above facts, I conclude that the actions of the parties indicate that the $255,000.00 advanced through these two checks was never intended for defendant Blue Horizon. Further, nothing in the record indicates that Blue Horizon assumed any obligation to repay these checks.

Although the language of the Promissory Note does indicate that "additional amounts" may be advanced, the note was executed by defendant Hutchison as President of Long Leaf, and

[39] Plaintiff's Exhibit 22 at 76,

not by any officer or representative of defendant Blue Horizon.

Accordingly, I conclude that on Count IV, defendant Blue Horizon is not liable to plaintiff under an implied contract theory for $255,000.00 advanced by the two checks payable to defendant Blue Horizon.

Claim Against Blue Horizon for Unjust Enrichment

As a partial alternative to plaintiff's claim of unjust enrichment against defendant Hutchison in Count III, Count V of the Complaint alleges that defendant Blue Horizon is liable under a theory of unjust enrichment for $255,000.00 for the two checks dated March 2, 2005 payable to Blue Horizon (Plaintiff's Exhibits 18 and 19). Specifically, Count V alleges that if these checks were not immediately delivered to defendant Hutchison, but were kept by defendant Blue Horizon, then Blue Horizon was unjustly enriched by its receipt of the checks.

A claim of unjust enrichment sounds in quasi-contract or contract implied in law. Sevast, 591 Pa. at 53 n.7, 915 A.2d at 1153 n.7 (citing Schott v. Westinghouse Electric Corp. 463 Pa. at 290, 259 A.2d at 448). The Schott court further explained:

> Quasi-contracts, or contracts implied in law, are to be distinguished from express contracts or contracts implied in fact. Unlike true contracts, quasi-contracts are not based on the apparent intention of the parties to undertake the performances in question, nor are they promises. They are obligations created by law for reasons of justice. Quasi-contracts may be found in the absence of any expression of assent by the party to be charged and may indeed be found in spite of the party's contrary intention.

Schott, 463 Pa. at 290-291, 259 A.2d at 449 (internal quotations omitted).

Such contracts "will be presumed or implied whenever necessary to account for a relation found to exist between parties where no contract in fact exists." Thomas, 350 Pa. at 266, 38 A.2d at 63. The existence of such a relation may be inferred if defendant has used for its benefit any property of plaintiff "in such manner and under such circumstances that the law will impose a duty of compensation therefor." Id. at 266, 38 A.2d at 63. The remedy for recovery is *restitution* to prevent *unjust enrichment*. J.A. & W.A. Hess, Inc. v. Hazle Township, 465 Pa. 465, 469, 350 A.2d 858, 861 (1976)(emphasis in original).

I conclude that plaintiff has not established that defendant Blue Horizon was unjustly enriched by receipt of these checks. Specifically, as discussed more fully above, these checks, both dated March 2, 2005, were written to Blue Horizon but were actually intended for Mid Atlantic.

Further, Brian Hutchison, owner of defendant Blue Horizon, endorsed the checks over to defendant Steven Hutchison at plaintiff's instruction; defendant Hutchison deposited them into the Hutchison RBC Account during March of 2005[40]; and defendant Hutchison later used some of the $255,000.00 to pay down the RBC Centura loan he had guaranteed.

[40] See Plaintiff's Exhibit 22, specifically, the Exhibit titled "Hutchison 1" at 3. This exhibit is one of four exhibits attached to defendant Hutchison's deposition. At trial, plaintiff introduced defendant Hutchison's full deposition together with the four deposition exhibits as Plaintiff's Exhibit 22.

Therefore, I cannot conclude that defendant Blue Horizon kept the $255,000.00 or used this money advanced by plaintiff for its benefit. See Thomas, 350 Pa. at 266, 38 A.2d at 63.

Accordingly, I conclude that on Count V, defendant Blue Horizon is not liable to plaintiff under an unjust enrichment theory for $255,000.00 for the two checks payable to defendant Blue Horizon.

CONCLUSION

Based upon the Findings of Fact, Conclusions of Law, and Discussion contained in this Adjudication, I entered the Verdict accompanying this Adjudication.

In that Verdict, I find in favor of plaintiff and against defendant Hutchison on Count I of plaintiff's Complaint for Breach of Contract on Note in the amount of $151,654.09.

On Count II for breach of Implied Contract, I find in favor of plaintiff and against defendant Hutchison in the amount of $1,352,040.00.

On Count IV for breach of Implied Contract, I find in favor of defendant Blue Horizon and against plaintiff.

On Count V for Unjust Enrichment, I find in favor of defendant Blue Horizon and against plaintiff.

By separate Order and Judgment, I deny in part and grant in part defendants' oral motion for judgment on partial findings made on the record at trial, and I enter judgment on the

Verdict accompanying this Adjudication.[41]

[41] The Order and Judgment will be filed immediately after the filing of the within Verdict and Adjudication.